

# State of South Dakota

## EIGHTY-SEVENTH SESSION LEGISLATIVE ASSEMBLY, 2012

790T0370

### HOUSE BILL NO. 1063

Introduced by: The Committee on Judiciary at the request of the Chief Justice

1 FOR AN ACT ENTITLED, An Act to repeal certain statutes related to the testimony of sex  
2 offense victims and to evidence of a victim's prior sexual conduct and to establish the  
3 rationale and effect of the repeal.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. That § 23A-22-15 be repealed.

6 ~~—23A-22-15. In prosecutions for a sex offense under chapter 22-22, evidence of specific~~  
7 ~~instances of a victim's prior sexual conduct shall not be admitted nor reference made thereto~~  
8 ~~before the jury or jury panel, except as provided in this section. Whenever a party proposes to~~  
9 ~~offer evidence concerning a victim's prior sexual conduct, the court shall first conduct a hearing~~  
10 ~~in the absence of the jury and the public to consider and rule upon the relevancy and materiality~~  
11 ~~of the evidence. (SL 2010, ch 127, § 1 repealed this section. SL 2010, ch 127, § 3 provides:~~  
12 ~~"The provisions of this Act are not effective unless, prior to the effective date of this Act [July~~  
13 ~~1, 2010], the Supreme Court adopts a new rule substantially equivalent to federal rule of~~  
14 ~~evidence 412 and provides that the rule becomes effective upon the legislative repeal of §§ 23A-~~  
15 ~~22-15 and 23A-22-15.1.")~~



1       Section 2. That § 23A-22-15.1 be repealed.

2       ~~23A-22-15.1. The testimony of the complaining witness in a trial for a charge of a sex~~  
3 ~~offense under chapter 22-22 may not, merely because of the nature of that charge, be treated in~~  
4 ~~any different manner than the testimony of a complaining witness in any other criminal case.~~  
5 ~~(SL 2010, ch 127, § 2 repealed this section. SL 2010, ch 127, § 3 provides: "The provisions of~~  
6 ~~this Act are not effective unless, prior to the effective date of this Act [July 1, 2010], the~~  
7 ~~Supreme Court adopts a new rule substantially equivalent to federal rule of evidence 412 and~~  
8 ~~provides that the rule becomes effective upon the legislative repeal of §§ 23A-22-15 and 23A-~~  
9 ~~22-15.1.")~~

10       Section 3. The provisions of this Act are in accordance with the Supreme Court's adoption  
11 of Rule 10-13 concerning the adoption of Federal Rule of Evidence 412 relating to the relevance  
12 of past sexual behavior of an alleged victim in sex offense cases (federal rape shield law),  
13 effective July 1, 2012, contingent upon the legislative repeal of §§ 23A-22-15 and 23A-22-15.1.